

519 Manufacturing Equipment Sales Tax Exclusion

Section 6377 is added to the Revenue and Taxation Code to read:

6377. (a) On or after July 1, 2012, and subject to the limitations described in subdivisions (d) and (e), there are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

(1) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of tangible personal property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered that property to its completed form, including packaging, if required.

(2) Tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(3) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any tangible personal property described in paragraph (1) or (2).

(4) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.

(b) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or tangible personal property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, or character of that property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original tangible personal property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) "Process" means the period beginning at the point at which any raw materials are received by the qualified person and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(5) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of tangible personal property.

(6) "Qualified person" means any person that is either of the following:

(A) A new trade or business that is engaged in those lines of business classified in Codes 3111 to 3399 inclusive, or 5112 of the North American Industry Classification System published by the United States Office of Management and Budget, 2007 edition. In determining whether a trade or business activity qualifies as a new trade or business, the following rules shall apply:

(i) In any case where a person purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Article 1 of Chapter 2 of Part 11, (commencing with Section 23101)), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including, real, personal, tangible, and intangible property) used by that person (or any related person) in the conduct of his or her trade or business exceed 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the person (or any related person). For purposes of this subparagraph only, the following rules shall apply:

(I) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the month following the quarterly period in which the person (or any related person) first uses any of the acquired trade or business assets in his or her business activity.

(II) Any acquired assets that constituted property described in Section 1221 (1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring person (or related person).

(ii) In any case where a person (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the North American Industry Classification System published by the United States Office of Management and Budget, 2007 edition, than are any of the person's (or any related person's) current or prior trade or business activities in this state.

(iii) In any case where a person, including all related persons, is engaged in trade or business activities wholly outside of this state and that person first commences doing business in this state (within the meaning of Article 1 of Chapter 2 of Part 11, (commencing with Section 23101)) after June 30, 2012 (other than by purchase or other acquisition described in clause (i)), the trade or business activity shall be treated as a new business.

(iv) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the person as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of clause (i).

(v) "Related person" any person that is related to that person under either Section 267 or 318 of the Internal Revenue Code.

(vi) "Acquire" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(vii) A "qualified person" shall not be regarded as a new trade or business when the qualified person has conducted business activities in a new trade or business for three or more years.

(B) A trade or business, other than a new trade or business as described in subparagraph (A), that is engaged in those lines of business classified in Codes 3111 to 3399 inclusive, or 5112 of the North American Industry Classification System published by the United States Office of Management and Budget, 2007 edition.

(7) Notwithstanding paragraph (6), "qualified person" for purposes of this section, does not include an apportioning trade or business described in subdivision (b) of Section 25128, or a member of an apportioning trade or business described in subdivision (b) of Section 25128.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Tangible personal property" as used in this section includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the qualified person or another party.

(C) Tangible personal property used in pollution control that meets or exceeds standards established by this state or any local or regional governmental agency within this state.

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing purposes after completion of the manufacturing process are not included.

(E) Tangible personal property used in recycling.

(11) "Tangible personal property" for purposes of this section does not include any of the following:

(A) Consumables with a normal useful life of less than one year.

(B) Furniture, inventory, equipment used in the extraction process, fuels used or consumed in the manufacturing process, or equipment used to store finished products that have completed the manufacturing process.

(C) Any tangible personal property that is used primarily in administration, general management, or marketing.

(c) No exemption shall be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer retains a copy of the exemption certificate in his or her records. The exemption certificate shall contain the sales price of the machinery or equipment that is exempt pursuant to subdivision (a), and shall be furnished to the board upon request.

(d) For a qualified person described in subparagraph (A) of paragraph (6) of subdivision (b), the exemption established by this section shall only apply with respect to the tax levied pursuant to Sections 6051, 6051.3, 6201 and 6201.3. Notwithstanding subdivision (a), the exemption established by this section shall not apply with respect to any tax levied pursuant to Sections 6051.2, 6051.5, 6051.8, 6201.2, 6201.5, and 6201.8, or pursuant to Article XIII of the California Constitution, or any tax levied by a county, city, or district pursuant to, or in accordance with, the Bradley- Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(e) For a qualified person that is described in subparagraph (B) of paragraph (6) of subdivision (b), the exemption established by this section shall only apply with respect to twenty percent of the tax levied pursuant to Sections 6051, 6051.3, 6201 and 6201.3. Notwithstanding subdivision (a), the exemption established by this section shall not apply with respect to eighty percent of the tax levied pursuant to Sections 6051, 6051.3, 6201 and 6201.3, any tax levied pursuant to Sections 6051.2, 6051.5, 6051.8, 6201.2, 6201.5, and 6201.8, or pursuant to Article XIII of the California Constitution, or any tax levied by a county, city, or district pursuant to, or in accordance with, the Bradley- Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(f) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of tangible personal property which, within one year from the date of purchase, is either removed from California or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(g) If a purchaser certifies in writing to the seller that the tangible personal property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax within the limitations described in subdivisions (d) or (e), and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of that portion of the sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the tangible personal property at the time the tangible personal property is so removed, converted, or used, and the sales price of the tangible personal property to the purchaser shall be deemed the gross receipts from that retail sale.

(h) This section applies to leases of tangible personal property classified as "continuing sales" and "continuing purchases" in accordance with Sections 6006.1 and 6010.1. The exemption established by this section shall apply to the rentals payable pursuant to such a lease, provided the lessee is a qualified person and the tangible personal property is used in an activity described in subdivision (a).

(i) At the time necessary information technologies and electronic data warehousing capabilities of the board are sufficiently established, the board shall determine an

efficient means by which qualified persons may electronically apply, and receive, an exemption certificate that contains information that would assist retailers in complying with this part with respect to the exemption described in this section.

(j) This section shall remain in effect only until July 1, 2016, and as of that date is repealed.

(k) This section shall only become operative if the sum of Sales Tax rates imposed under this Part and under Article XIII of the California Constitution is equal to or greater than 7.25 percent.